

**IN THE UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FAROUK SYSTEMS, INC.

Plaintiff,

v.

FHI HEAT, INC.

Defendant.

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**CIVIL ACTION NO. 4:07-cv-02333
JURY DEMANDED**

**DEFENDANT FHI HEAT INC.'S EMERGENCY MOTION TO COMPEL
COMPLIANCE FROM DEPONENT FAROUK SHAMI**

TO THE HONORABLE U.S. DISTRICT JUDGE VANESSA D. GILMORE:

NOW COMES Defendant/Counter-Plaintiff, FHI Heat, Inc. ("Defendant" or "FHI Heat"), and files this Emergency Motion to Compel Compliance From Deponent Farouk Shami. In support of this Emergency Motion, Defendant would respectfully show the following:

I.

On January 27, 2009, Defendant noticed the First Amended Notice of Deposition of Farouk Shami. *See* Exhibit "A." Mr. Shami is the CEO of Farouk Systems, Inc. Within the Notice of Deposition, Defendant included a subpoena duces tecum listing eight (8) narrow items for Mr. Shami to bring to his deposition. *See* Exhibit "A." Despite having forty-three (43) days notice since Defendant's First Amended Notice of Deposition, Plaintiff sandbagged and waited until the afternoon before Farouk Shami's 10:00 a.m. deposition to serve Defendant its objections to the subpoena duces tecum. In Plaintiff's objections, Farouk Systems, Inc says "[n]o documents responsive to new requests will be produced." *See* Exhibit "B."

Under the Federal Rules, the discovery request must allow for a reasonable time to

respond. *See* Fed. R. Civ. P. 30(b)(1), (2); Fed. R. Civ. P. 34(b). In responding to production of documents, the party to whom the request is directed must respond within thirty (30) days. Fed. R. Civ. P. 34(b)(2). Plaintiff has been allowed forty-three (43) days to produce the requested documents. Additionally, Plaintiff failed to file a motion to quash the deposition or the subpoena duces tecum, and has not timely asserted any objections to any of the eight (8) items listed in the subpoena duces tecum.

The parties have agreed to an extend discovery through the deposition of Farouk Shami occurring at 10:00 a.m. tomorrow. Plaintiff's contention that discovery ended on September 30, 2008 flies in the face of the fact that no less than a dozen depositions occurred in 2009.

II.

FHI Heat's requests are not voluminous. Rather the requests within the subpoena duces tecum are limited to eight (8) narrow items that Farouk Shami is to bring to his deposition. Plaintiff has no excuse for waiting until the eve of the deposition to refuse to produce documents at Farouk Shami's deposition.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant FHI HEAT, INC. respectfully prays that this Court grant its Emergency Motion to Compel Compliance From Deponent Farouk Shami and order Mr. Shami to produce all eight (8) listed categories of documents in the subpoena duces tecum at his deposition. Defendant also prays for such other and further relief to which it may be justly entitled, in law and in equity.

Respectfully submitted,

Martin, Disiere, Jefferson & Wisdom, L.L.P.

/s/ Dale Jefferson

Dale Jefferson

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Federal ID No. 9116
808 Travis, Suite 1800
Houston, Texas 77002
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jefferson@mdjwlaw.com

ATTORNEY-IN-CHARGE
FOR DEFENDANT / COUNTER-PLAINTIFF
FHI HEAT, INC.

OF COUNSEL:

Gary L. Pate
State Bar No. 24029763
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schulz@mdjwlaw.com

CERTIFICATE OF CONFERENCE

I, Gary Pate, hereby attest that I have made a good faith effort to discuss this motion with opposing counsel, Anthony Matheny, by telephone conversation on March 11, 2009. Mr. Matheny stated that he was opposed to foregoing motion.

March 11, 2009

/s/ Gary Pate
Gary Pate

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been served by electronic mail via CM/ECF and by certified mail, on this 11th day of March, 2009 to:

Anthony F. Matheny
Allen Van Fleet
Ben D. Tobor
Greenberg Traurig, L.L.P.
1000 Louisiana, Suite 1700
Houston, Texas 77002

Via Certified Mail/ RRR

/s/ Dale Jefferson
Dale Jefferson

EXHIBIT "A"

Martin, Disiere, Jefferson & Wisdom

ATTORNEYS AT LAW LLP

808 Travis • Suite 1800 • Houston, Texas 77002 • Phone: 713-632-1700 • Fax: 713-222-0101 • www.mdjwlaw.com

January 27, 2009

Mr. Anthony Matheny
Mr. Ben D. Tabor
Greenberg Traurig, LLP
1000 Louisiana, Suite 1800
Houston, Texas 77002

Via Facsimile: 713.754.7583

Re: Civil Action No. 4:07-cv-02333; *Farouk Systems, Inc. v. FHI Heat, Inc.*;
In the United States District Court for the Southern District of Texas,
Houston Division.

Dear Counsel:

Attached please find Defendant/Counter-Plaintiff FHI Heat, Inc.'s First Amended Notice of Oral and Videotaped Deposition of Farouk Shami with Subpoena Duces Tecum.

Should you have any questions with regard to the foregoing, please do not hesitate to contact us.

Very truly yours,

Martin, Disiere, Jefferson & Wisdom L.L.P.



Shantrise P. Hall
Legal Assistant to Gary L. Pate

/sph
Attachment
7860.0003 00342021

IN THE UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FAROUK SYSTEMS, INC.

Plaintiff,

v.

FHI HEAT, INC.

Defendant.

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CIVIL ACTION NO.4:07-cv-02333
JURY DEMANDED

**DEFENDANT/ COUNTER-PLAINTIFF FHI HEAT, INC.'S FIRST AMENDED
NOTICE OF ORAL AND VIDEOTAPED DEPOSITION OF FAROUK SHAMI
WITH SUBPOENA DUCES TECUM**

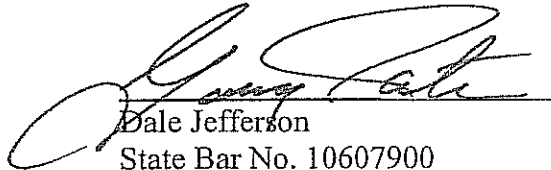
PLEASE TAKE NOTICE that pursuant to Federal Rule 26 and 30, Defendant/
Counter-Plaintiff FHI HEAT, INC. provides its First Amended notice that it intends to
take the oral and videotaped deposition of Farouk Shami. The deposition of Farouk
Shami will take place at the following location:

**GREENBERG TRAURIG, LLP
1000 Louisiana, Suite 1800
Houston, Texas 77002**

The deposition will commence at 10:00 a.m. on Thursday, March 12, 2009 and
will continue from day today until completed. One or more representatives of FHI Heat,
Inc. may be present in attendance. The deposition will be taken before a court reporter
authorized to administer the oath and to stenographically record the deposition. In
addition, the deposition will be videotaped. You are invited to attend and examine the
witness as permitted under the Federal Rule of Civil Procedure. Mr. Farouk Shami is
commanded to bring with him the documents identified on Attachment "A" Subpoena
Duces Tecum.

Respectfully submitted,

Martin, Disiere, Jefferson & Wisdom, L.L.P.



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FOR DEFENDANT/ COUNTER-PLAINTIFF
FHI HEAT, INC.

OF COUNSEL:

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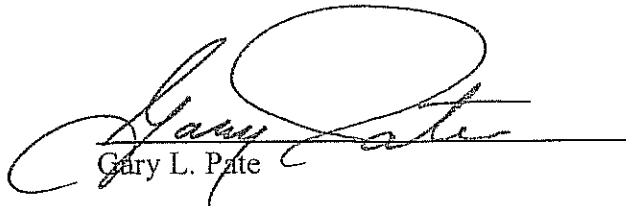
Adel Meyerov Sander
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(713) 222-0101 Facsimile
sander@mdjwlaw.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been served via facsimile, on this the 27th day of January, 2009:

Via Facsimile No. (713) 754-7583

Mr. Anthony Matheny
Mr. Ben D. Tobor
GREENBERG TRAURIG LLP
1000 Louisiana, Suite 1800
Houston, Texas 77002


Gary L. Pate

ATTACHMENT "A"
SUBPOENA DUCES TECUM

1. A true and correct copy of any financial statement which reflects profits from the sale of any Pink CHI products advertised for the benefit of breast cancer awareness for the years 2005, 2006, 2007 and 2008.
2. A true and correct copy of any cancelled checks or other evidence of payment which reflects actual donations made from the sale of any Pink CHI products advertised for the benefit of breast cancer awareness for the years 2005, 2006, 2007 and 2008.
3. A true and correct copy of any cancelled checks or other evidence of payment which reflects actual donations made from the sale or auction of the Million Dollar CHI to the victims of conflicted diamonds.
4. A true and correct copy of any financial statement which reflects profits earned by Farouk Systems, Inc. for the years 2005, 2006, 2007 and 2008 from the sale of any hair styling appliances. (Hair styling appliances as used herein refers to hair dryers, curling irons and flat irons).
5. Any evidence of actual confusion of consumers which Plaintiff has in its custody or possession evidencing alleged confusion between the products or marks of Plaintiff and Defendant.
6. A true and correct copy of any and all documents which support Plaintiff's claim for damages.
7. A true and correct copy of any electronic messages sent by customers to Farouk Systems evidencing alleged confusion between the products or marks of Plaintiff and Defendant.
8. Any documents evidencing any alleged damages sought by Farouk Systems, Inc. from FHI Heat, Inc.

MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.

ATTORNEYS AT LAW
Niels Esperson Building
808 Travis, Suite 1800
Houston, Texas 77002
Telephone: (713) 632-1700
Telecopier: (713) 222-0101

FACSIMILE TRANSMISSION

DATE: January 27, 2009

TO: Mr. Anthony Matheny
Mr. Ben Tabor
Greenberg Traurig, LLP

FAX NO.: 713.754.7583

FROM: Shantrise P. Hall

RE: Civil Action No. 4:07-cv-02333; *Farouk Systems, Inc. v. FHI Heat, Inc.*; In the United States District Court for the Southern District of Texas, Houston Division.

MESSAGE: Please see a copy of the attached correspondence transmitting FHI Heat's First Amended Notice of Oral and Videotaped Deposition of Farouk Shami with Subpoena Duces Tecum.

Total Pages: 6 (Including Cover Sheet)

If you had any problems receiving this fax transmission, or if you did not receive the complete fax, please call (713) 632-1752 immediately. Thank you.

The information contained in this fax message is intended only for the personal and confidential use of the designated recipients names above. This message may be an attorney-client communication, and as such, is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail.

***** -COMM. JOURN. ***** DATE JAN-27 009 ***** TIME 16:57 *****

MODE = MEMORY TRANSMISSION

START=JAN-27 16:54

END=JAN-27 16:57

FILE NO.=485

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***** KM-F1060 ***** - ***** - 7134792169- *****

MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.

ATTORNEYS AT LAW
 Niels Esperson Building
 808 Travis, Suite 1800
 Houston, Texas 77002
 Telephone: (713) 632-1700
 Telecopier: (713) 222-0101

FACSIMILE TRANSMISSION**DATE:** January 27, 2009

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 Mr. Ben Tabor
 Greenberg Traurig, LLP

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EXHIBIT "B"

Greenberg Traurig

Anthony F. Matheny
Tel. 713.374.3583
Fax 713.754.7583
mathenya@gtlaw.com

March 11, 2009

Via Hand Delivery

Gary Pate
Dale Jefferson
Martin, Disiere, Jefferson & Wisdom, L.L.P.
808 Travis, Suite 1800
Houston, Texas 77002

Re: Civil Action No. 4:07-cv-02333; styled *Farouk Systems, Inc. v. FHI Heat, Inc.*, In the United States District Court for the Southern District of Texas, Houston Division; Our File No. 001129.011300

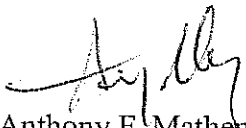
Dear Gary and Dale:

Enclosed is Plaintiff's Objections to Defendant's First Amended Notice of Oral and Videotaped Deposition of Farouk Shami with Subpoena Duces Tecum.

Should you have any questions, please let us know.

Very truly yours,

GREENBERG TRAURIG LLP


Anthony F. Matheny

Enclosure

RECEIVED

MAR 11 2009

GARY L. PATE

HOU 406,606,375

ALBANY
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Tokyo Office/Strategic Alliance

www.gtlaw.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
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FAROUK SYSTEMS, INC.,

Plaintiff,

v.

FHI HEAT, INC.,

Defendant.

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Civil Action No. 4:07-cv-02333

**PLAINTIFF'S OBJECTIONS TO DEFENDANT'S FIRST AMENDED
NOTICE OF ORAL AND VIDEOTAPED DEPOSITION OF
FAROUK SHAMI WITH SUBPOENA DUCES TECUM**

Plaintiff Farouk Systems, Inc. ("FSI") serves this its Objections To Defendant's First Amended Notice of Oral and Videotaped Deposition of Farouk Shami with Subpoena Duces Tecum.

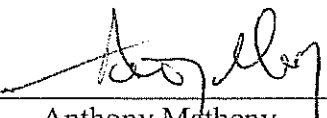
FSI objects to the Subpoena Duces Tecum as untimely and seeking production of documents for the first time, well after the September 30, 2008 deadline for written discovery which was agreed to, and acknowledged in Court filings by, FHI. No documents responsive to new requests will be produced.

FSI further objects to the Subpoena Duces Tecum as being unduly burdensome and repetitious of requests for production previously served by Defendant on FSI and to which FSI has already responded and FSI's objections to those requests are incorporated herein. To the extent new, responsive, non-privileged or non-attorney work product, documents not previously produced are in the possession, custody or control of FSI, those documents will be produced. Otherwise, FSI will not produce for a second time any additional documents.

Respectfully submitted,

GREENBERG TRAURIG, LLP

Dated: March 11, 2009

By: 
Anthony Matheny
State Bar No. 24002543
S.D. Tex. Bar No. 303157
1000 Louisiana, Suite 1800
Houston, Texas 77002
Tel: (713) 374-3583
Fax: (713) 754-7583

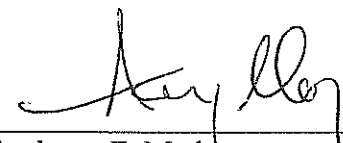
ATTORNEYS FOR PLAINTIFF
FAROUK SYSTEMS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2009, a true and correct copy of the foregoing Plaintiff's Objections To Defendant's First Amended Notice of Oral and Videotaped Deposition of Farouk Shami with Subpoena Duces Tecum was served by the manner indicated on the following:

Gary L. Pate
Dale Jefferson
Martin, Disiere, Jefferson & Wisdom, L.L.P.
808 Travis, Suite 1800
Houston, Texas 77002

Via Hand Delivery


Anthony F. Matheny